Supreme Court, U. S.
FILED
DEC 26 1979
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

October Term, 1979

No. **79-1001**

In the Matter of
HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,
Debtors.

ROSE SHUFFMAN, As Executrix of
the Estate of OSCAR SHUFFMAN, Deceased,
Petitioner,

—against—

HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

DAVID K. SHUFFMAN
Attorney for Petitioner
14 East 60th Street
New York, New York 10022
Telephone: (212) 755-0006

Printinghouse Press – Bar Ass'n Steno Serv. (Appeals Section) 212-840-1891

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Statement of Facts	6
Summary of the Argument	11
Argument	12
Importance of this Petition . . .	16
Conclusion	17

APPENDIX

APRIL 26, 1979 ORDER OF THE COURT OF APPEALS DISMISSING APPEAL	A-1
SEPTEMBER 26, 1979 EN BANC ORDER OF THE COURT OF APPEALS	A-2
SETPEMBER 26, 1979 ORDER OF THE COURT OF APPEALS DENYING REHEARING	A-4
DECEMBER 21, 1978 OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT DENYING MOTION TO VACATE MEMORANDUM AND ORDER DATED FEBRUARY 22, 1978.	A-5

TABLE OF CASES AND AUTHORITIES

	Page
Article III, United States Constitution	3
Dictograph Products Company v. Sonatone Corporation, 230 F.2d. 131, (2nd Cir., 1956), reh'g denied, 231 F.2d 867 (1956)	3
Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944)	3,4,5
Messinger v. Anderson, 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152	3,4
Pepper v. Litton 295 U.S. 308 (1939)	3,4,5
Reading Company v. Brown, 88 S.Ct. 1759 (1968)	11
United States v. United States Smelting Refining & Mineral Co. 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750	3,4

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

----------x

In the Matter of :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :

Debtors. :

----------x

ROSE SHUFFMAN, As Executrix of :
The Estate of OSCAR SHUFFMAN, :
DECEASED, :

Petitioner, :

v. :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :

Respondents. :

----------x

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Second Circuit, entered April 24, 1979.

OPINIONS BELOW

The United States Court of Appeals for the Second Circuit wrote no opinion in denying Petitioner's Motion to Mandate Jurisdiction Back to the District Court and in granting Respondents' Motion to Dismiss Appeal. The Order denying Petitioner's motion and granting Respondents' motion is reprinted at page A-1 of the Appendix hereto

The Opinion of the United States District Court denying the Motion to Vacate its original Memorandum and Order is contained within the transcript of the hearing held on December 21, 1978, and is reprinted at page A-5 of the Appendix hereto.

JURISDICTION

The Order of the United States Court of Appeals for the Second Circuit was entered on April 24, 1979. The en banc order of the United States Court of Appeals for the Second Circuit denying the suggestion for en banc rehearing of the April 24, 1979 order was entered on September 26, 1979, and is reprinted at page A-2, infra. The order of the United States Court of Appeals denying rehearing of the April 24, 1979 order was entered on September 26, 1979, and is reprinted at page A-4, infra.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

---

*As used herein, "Petitioner" refers to both Rose Shuffman, as Executrix of the Estate of Oscar Shuffman, Deceased and the late Oscar Shuffman.

QUESTIONS PRESENTED

1. Whether under Messinger v. Anderson 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152, United States v. United States Smelting, Refining & Minteral Co., 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 and Dictograph Products Company v. Sonatone Corporation, 230 F.2d 131 (2nd Cir., 1956), reh'g denied, 231 F.2d. 867 (1956). it was an "abuse of discretion" and "breach of duty" for the Court of Appeals to dismiss an appeal on motion without conducting a hearing on the merits especially after the District Court acknowledged reversible error in its order which was affirmed by the first panel?

2. Whether, under Pepper v. Litton, 295 U.S. 308 (1939) and Hazel-Atlas Glass Co. 322 U.S. 238 (1944), the United States Court of Appeals for the Second Circuit perpetrated a fraud on the United States Supreme Court by dismissing an appeal on Motion without conducting a hearing on the merits where, in the interim, the District Court acknowledge reversible error in its order which was affirmed by the first panel?

3. Whether, under Article III of the United States Constitution, the United States Supreme Court has a duty to the people of the United States to honestly administer justice?

4. Whether, under Messinger v. Anderson 225, U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152 and United States v. United States Smelting

Refining & Mineral Co., 339 U.S., 186, 70 S. Ct. 537, 94 L.Ed. 750, the United States Supreme Court has a duty to reverse its own order denying the Petition for a Writ of Certiorari in Case No. 79-178 which left stand the United States Court of Appeals for the Second Circuit's original affirmance of the District Court's order affirming a bankruptcy appeal in view of the District Court's intervening repudiation of its original order as clearly erroneous?

5. Whether, under Rule 19 of the Rules of the Supreme Court of the United States, Messinger v. Anderson, 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152, United States v. United States Smelting, Refining & Mineral Co., 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 Pepper v. Litton, 295 U.S. 308 (1939), and Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944) the United States Supreme Court has as duty to vacate its orders denying petitions for writs of certiorari in Cases Nos. 77-1812 and 79-178, the latter case being the one which had the effect of leaving stand the Court of Appeals affirmance of the repudiated District Court order, in view of the documentation obtained in response to the motion for leave to file petition for a writ of mandamus and petition for a writ of mandamus in Case No. 79-681, which documentation conclusively shows that the United States Court of Appeals for the Second Circuit perpetrated a fraud on the United States Supreme Court and obstructed justice in the former case by allowing an altered and forged order to stand for Supreme Court review?

6. Whether, under Pepper v. Litton, 295 U.S. 308 (1939), the United States Supreme Court must grant certiorari where a failure to do so will result in a fraud and an injustice contrary to the honest administration of justice?

7. Whether under Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944), the United States Court of Appeals for the Secord Circuit breached its duty to honestly administer justice, as part of a continuing criminal conspiracy to obstruct justice and defraud the Petitioner when it denied Petitioner's motion for a remand to the District Court to correct its obvious errors?

8. Whether the Supreme Court of the United States will join in the conspiracy to obstruct justice and cover up of the fix by refusing to correct the clearly erroneous order in violation of its duty and oath?

STATEMENT OF FACTS

On September 13, 1978, Petitioner moved to rehear and reargue the February 22, 1978 Memorandum and Order of the United States District Court affirming a bankruptcy appeal. The District Court, although having acknowledged error on more than one occasion, denied the motion citing lack of jurisdiction in view of the pending appeal in the Court of Appeals, which the District Court stated had ample power to correct any errors.

On December 6, 1978 the United States Court of Appeals for the Second Circuit affirmed the order of the United States District Court for the Southern District of New York (Brieant, J.) which in turn affirmed an order and amended order of the Bankruptcy Court. On March 5, 1979, the Circuit Court denied a Petition for Rehearing En Banc.

After the Per Curiam Opinion was handed down on December 6, 1978, and prior to the filing of the Petition for Rehearing, Petitioner moved in the District Court to vacate its Memorandum and Order which was affirmed by the Per Curiam Opinion. Petitioner based her motion on the District Court's prior acknowledgment that it had no idea that it approved the post-Confirmation commission payments constituting the Bankruptcy Court's amended findings which the Court had said it could not and would not do. The pertinent part of the December 21, 1978 transcript reads as follows:

> MR. SHUFFMAN: Your Honor, under Smith v. Pollen adopted in this circuit by Ryan v. United States

> Lines, this court does have the duty to move in the Court of Appeals for a remand now that it knows its own affirmance was in error.
>
> THE COURT: I don't know that. They tell me that it's not in error. I don't know that there is any action by this court that is in error.
>
> MR. SHUFFMAN: Your Honor stated that you did not take jurisdiction for a period of post-confirmation, yet you ordered the appellant paid monies post-confirmation.
>
> THE COURT: That is what the bankruptcy judge ordered.

The Court of Appeals, however, in its Per Curiam Opinion, affirmed the District Court's clearly erroneous Memorandum and Order, and also repeated that it lacked jurisdiction to approve and would not approve any post-Confirmation commission payments. The pertinent part of the Opinion reads as follows:

> Equally unfounded is appellant's contention that the bankruptcy judge erred in denying priority status to her claim for commissions as an administration expense. The record establishes that appellant has received payment in full on all deliveries made by Rudd to Hartford during the period of arrangement. If appellant believes that she has

not received commissions due her on deliveries made thereafter, her remedy lies not in the bankruptcy court nor on this appeal, but in a plenary action at law. See In re Grodon, 44 F.Supp. 581 (S.D.N.Y. 1942); 9 Collier on Bankruptcy ¶¶8.11, 8.12 (14th ed. 1975).

The Bankruptcy Court's amended findings made without an evidentiary hearing were allegedly based upon debtors' books and records which showed Petitioner as being indebted to the debtors on September 5, 1974, the date of confirmation and discharge. The additional monies "volunteered" by the debtors to cover commissions earned from September 5, 1974 until the end of the calendar year were, however, paid as "administration expenses."

Since the Court of Appeals had not corrected the District Court's error, but had repeated it, Petitioner sought to have the lower Court advise the higher Court of its error at the December 21, 1978 hearing. The District Court again refused, citing lack of jurisdiction.

On March 5, 1979, the Court of Appeals denied the Petition for Rehearing. The next day, another panel granted Respondents' motion to dismiss the appeal, citing the Court's denial of the Petition for Rehearing. The Court also denied Petitioner's motion for a remand to allow the District Court to correct the errors which the Court of Appeals had affirmed. On April 24, 1979, the same scenario was repeated, when the Court granted a motion to dismiss and denied a motion to remand.

On October 1, 1979 this Court refused to review the Per Curiam Opinion of the Court of Appeals, and on November 26, 1979, also denied the Petition for Rehearing. The Supreme Court thereby left standing an Opinion which was clearly erroneous, and in effect said one and one is three, when the documentary evidence shows one and one is two.

Also on October 26, 1979, Petitioner filed a Motion for Leave to File a Petition for a Writ of Mandamus and Petition for a Writ of Mandamus, seeking, inter alia, to obtain a transcription of a tape recording of the oral argument on Petitioner's very first motion to remand filed in the Court of Appeals. Petitioner believed that a "CORRECTED" Order of the Court of Appeals, received approximately one week after the original Order, was an altered, back-dated forgery. The Supreme Court refused to review the "CORRECTED" Order, which the District Judge called incomprehensible, in Case No. 77-1812.

Petitioner also charged in her mandamus petition that the Judges of the United States Court of Appeals for the Second Circuit were engaged in an ongoing conspiracy to obstruct justice as part of a cover up of a fix in the Bankruptcy Court, which was also being aided and abetted by several District Court Judges and the United States Attorney. The charges of osbruction of justice and cover up of the fix were first brought to the Supreme Court's attention in Case No. 77-1812.

On November 8, 1979, while the Petition for a Writ of Mandamus was pending in the Supreme Court, Petitioner was provided with a semi-complete transcript of the May 9, 1978 oral argument, when her motion to

obtain the transcript, which had been pending for over a year was finally granted.

The transcript provided by the Court of Appeals clearly shows that the "CORRECTED" Order was an altered, forged document. Since the Court of Appeals was made aware of the issuance of the "CORRECTED" Order on dozens of occasions, and did not advise the Supreme Court of its bogus nature, the lower Court knowingly allowed a false document to stand for Supreme Court review.

On or about November 30, 1979, the Solicitor General of the United States filed a Memorandum for the Federal Respondents in Opposition to the Motion for Leave to File a Petition for a Writ of Mandamus, etc.* containing a semi-complete copy of the May 9, 1978 transcript as an exhibit. Despite the knowledge that a false document was allowed to stand for Supreme Court review, the Solicitor General failed to join in Petitioner's request that the Supreme Court sua sponte vacate its order in Case No. 77-1812, and consider the petition for a writ of certiorari filed therein based upon the legitimate order.

Additional facts detailing the cover up of the fix by the Court of Appeals are presented in Case No. 79-681, and will not be repeated here. Since the facts are supported by documentary evidence, they are irrefutable. The facts clearly show that Petitioner has been defrauded, and that the Supreme Court has been "burglarized".

*This Petition, Case Docket No. 79-681, is still pending in the Supreme Court.

SUMMARY OF THE ARGUMENT

In Reading Company v. Brown, 88 S.Ct. 1759 (1968), this Court indicated that certiorari will be granted where there is presented an important issue of first impression dealing with the administration of the bankruptcy laws. The case at bar, it is respectfully submitted, falls squarely within this criteria because it deals with:

(1) the duty of a United States Judge including a Supreme Court Justice, under Article III of the Constitution to correct an erroneous decision even after it has been affirmed or left standing by the denial of a previous petition for a writ of certiorari, in order to prevent a fraud and an injustice;

(2) whether the failure to perform that duty is an "abuse of discretion" and contrary to the honest administration of justice; and

(3) the duty of this Court under Rule 19 of the Rules of the Supreme Court to supervise the workings of the lower federal courts which have deliberately engaged in conduct which obstructs the honest administration of justice in order to prevent a just determination of the cause.

As a result, we respectfully submit, the case at bar justly warrants the granting of this petition, which will undoubtedly clear up ambiguities in the administration of the bankruptcy laws and all laws.

ARGUMENT

Very simply, the District Court Judge whose order was affirmed by the Per Curiam Opinion which this Court refused to review in Case No. 79-178 acknowledged reversible error prior to the filing in this Court.

The Judges of the United States Court of Appeals, who were made aware of the error on a subsequent appeal, refused to exercise their discretion to correct the errors in the first panel's Per Curiam Opinion, and instead chose to dismiss the subsequent appeal on motion without conducting a hearing on the merits. A third panel repeated, necessitating this petition.

In refusing to review and correct the "clearly erroneous" Opinion of the prior panels, the Judges of the third Court of Appeals panel violated their oaths to honestly administer justice, and contributed to a judicially sanctioned fraud.

The Supreme Court of the United States is too important an institution in our system of government to allow its integrity to be emasculated by knowingly and wilfully allowing a litigant to be defrauded as part of a criminal conspiracy to obstruct justice involving members of the Federal Judiciary.

Recently obtained documents released in response to a Motion For Leave to File a Petition for a Writ of Mandamus and Petition for a Writ of Mandamus in related Case No. 79-681 conclusively show that the Judges of the United States Court of Appeals for the Second Circuit perpetrated a fraud on the

United States Supreme Court and the Petitioner herein by allowing a false, forged Order to stand for Supreme Court review in Case No. 77-1812.

Moreover, documents obtained over a year ago conclusively establish that two of the three Judges who participated in the Per Curiam Opinion reviewed by this Court in Case No. 79-178, also participated in a sham, phony "Charade" hearing on a motion which had already been denied. The motion sought the appointment of a special prosecutor to investigate the conspiracy to obstruct justice and cover up of a fix in the Bankruptcy Court, which included allowing the forged order to stand for Supreme Court review.

In addition to the District Court's acknowledgment of error, this Court had before it on the Petition for a Writ of Certiorari in Case No. 79-178 documentary evidence in the form of the Appendix which conclusively showed the Per Curiam Opinion to be clearly erroneous. Unfortunately, the High Court chose to ignore the truth or was misled into denying it.

The bottom line then becomes that either the Justices of this Court were negligent, incompetent or downright dishonest in their treatment of the original Petition for a Writ of Certiorari in Case No. 79-178 which sought a review of the Per Curiam Opinion on the merits. None of the three explanations above are viable for a government of laws, not men.

The fundamental question confronting the Supreme Court, not just in the instant Petition, but going to the core of its legitimacy, is whether or not the Supreme Court of the United States will honestly adjudicate the cases and controversies which ultimately come before it.

This Petition brings the question squarely to the fore. The Supreme Court recently refused to review the original Per Curiam Opinion, despite the knowledge that the decisions of the Courts below were clearly erroneous. Article III of the Constitution dictates a different result.

Given the current of the present world climate a Republic founded upon the law must not flounder for the sake of protecting a few dishonest men who view themselves as above the law. One cannot judge the acts of others unless one's own mistakes are corrected, not covered up.

The Supreme Court now has before it in the form of this Petition the perfect example for demonstrating and exhibiting the supremacy of law over the human fallibility of men. By granting this Petition and then remanding the cause to the lower courts for the correction of their acknowledged errors, the Supreme Court will demonstrate the ultimate dynamics of the law in action.

To deny the Petition, thereby perpetuating a clearly erroneous result, will bring the men who comprise the Court into disrepute. It will erode the foundation upon which the pillars of a free society rest.

If Mr. Justice Brandeis were alive, he would remind his Brother Justices that:

> "The Government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

The Honorable Justices of the Supreme Court have taken a solemn oath to honestly administer justice. Now that the Court is aware of the clearly erroneous result reached below, it must seize this opportunity to correct the resulting fraud and injustice.

The failure to do so will be a signal to every corrupt lawyer and judge in the United States that if you have a problem, and can afford the right connections, don't worry, it will be taken care of.

Such is <u>not</u> the rule of law. It is the rule of corrupt men.

IMPORTANCE OF THIS PETITION

This petition presents a situation where the Court of Appeals for the Second Circuit has so far departed from the accepted and usual course of judicial proceedings, and has so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

Further, this petition presents a situation calling for review of a ruling of a lower court which has been repudiated as being clearly in error by the Judge that reached it, which erroneous ruling has been left standing by a previous denial of a petition for a writ of certiorari.

The word honest and Judge should be synonymous. Judges, or Justices of the Supreme Court, should exercise their sound discretion by correcting errors brought to their attention.

The failure to do so would represent a break-down of law, and mold the Justices as dishonest.

CONCLUSION

Petitioner respectfully prays that the petition for a Writ of Certiorari be granted.

Respectfully submitted,

DAVID K. SHUFFMAN
Attorney for the Petitione
14 East 60th Street
New York, New York 10022
(212) 755-0006

New York, New York
December 17, 1979

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 24th day of April, one thousand nine hundred and seventy nine.

In the Matter of	
HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.,	Docket # 79-5008
Debtors.	

It is hereby ordered that the motion by counsel for the debtors-appellees to dismiss the appeal by notice of motion dated February 23, 1979 be and it hereby is granted.

It is further ordered that appellant's motion to remand the cause to the district court is denied.

/s/ William H. Mulligan
Hon. William H. Mulligan, C.J.

/s/ E.A. Graafeiland
Hon. Ellsworth A. Van Graafeiland, C.J.

/s/ Lloyd F. MacMahon
Hon. Lloyd F. MacMahon*
United States District Judge
for the Southern District of
New York, sitting by designation.

UNITED STATES COURT OF APPEALS

For The

SECOND CIRCUIT

At a stated term of the United States of Appeals, in and for the Second Circuit, held at the United States Court House, one thousand nine hundred and seventy-nine.

BEFORE: HON. IRVING R. KAUFMAN, CH.J.
HON. WILFRED FEINBERG, C.J.
HON. WALTER R. MANSFIELD, C.J.
HON. WILLIAM H. MULLIGAN, C.J.
HON. JAMES L. OAKES, C.J.
HON. WILLIAM H. TIMBERS, C.J.
HON. MURRAY I. GURFEIN, C.J.
HON. ELLSWORTH A. VAN GRAAFEILAND,C.J.
HON. THOMAS J. MESKILL, C.J.
HON. JON O. NEWMAN, C.J.
HON. AMALYA L. KEARSE, C.J.
HON. LLYD F. MacMAHON, D.J.

In the Matter of :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., : Docket #
Debtors, :

---x 79-5008

ROSE SHUFFMAN, As Executrix of :
the Estate of Oscar Shuffman,

Appellant, :

-against- :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :

Appellees. :

---x

A motion for rehearing of this court's order of April 24, 1979, granting the motion dismissing the appeal herein and denying the motion mandating jurisdiction to the district court, containing a suggestion that the matter be heard en banc, having been filed herein by counsel for the appellant, and no active judge or judge who was a member of the panel having requested that a poll be taken on said suggestion.

UPON CONSIDERATION thereof, it is

ORDERED that said suggestion be and it hereby is DENIED.

A. DANIEL FUSARO,
Clerk

/s/ Arthur Heller

BY: Arthur Heller,
Deputy Clerk

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 26th day of September, one thousand nine hundred and seventy-nine.

In Re:
HARTFORD TEXTILE CORP., et al.
Debtors.

Docket # 79-5008

ROSE SHUFFMAN, As Executrix of the Estate of OSCAR SHUFFMAN,

Appellant,

-against-

HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.,

Appellees.

It is hereby ordered that the motion made herein by counsel for the appellant by notice of motion dated April 30, 1979 for rehearing and reargument of this court's order of April 24, 1979 be and it hereby is denied.

/s/ William H. Mulligan
Hon.William H. Mulligan

/s/ Ellsworth A. VanGraafeiland
Hon.Ellsworth A. VanGraafeiland
Circuit Judges

/s/ Lloyd F. MacMahon
Lloyd F. Macmahon,
Dictrict Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of

HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.,

Debtors.

ROSE SHUFFMAN, As Executrix of The Estate of OSCAR SHUFFMAN,

Appellant

v.

HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.,

Debtors.

Motion Denied see transcript of hearing this date, So Ordered Brieant, J. 12-21-78

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

In the Matter of :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :
73 B 674,
Debtors. : 676

---------- x

ROSE SHUFFMAN, As Executrix of :
The Estate of OSCAR SHUFFMAN, :

Appellant :

v. :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :

Debtors. :

----------x

December 21, 1978
10:00 a.m.

Before:

HON. CHARLES L. BRIEANT,
District Judge

Appearances:

DAVID K. SHUFFMAN, Esq.
Attorney for Appellant

WEIL, GOTSHAL & MANGES, Esq.s
Attorney for Debtors

BY: BRAD ERIC SCHELER, Esq.
Of Counsel

MR. SHUFFMAN: Good morning, your Honor.

THE COURT: Good morning, Mr. Shuffman.

I didn't really expect to see you here today. I thought your case had been decided by the Second Circuit.

MR. SHUFFMAN: Your Honor, if I may, we submitted a motion to the Second Circuit for leave to file an oversized petition for re-hearing and for extra time to file that petition based upon an affidavit which states, in part, "Moreover, as the most recent motion filed in the district court annexed hereto as Exhibit B shows, this Court's affirmance is wholly illogical, makes no sense, and is just plain dumb.

"The United States --

THE COURT: Those are rather strong words, you know.

MR. SHUFFMAN: Yes, sir, they are. Now if I may continue, your Honor, from that affidavit, "The United States Court of Appeals for the Second Circuit has a reputation for its judicial wisdom and acumen. The three-judge panel which heard the appeals in this case could not collectively be that stupid that they could write and all concur in probably the most idiotic decision ever to come out of the Second Circuit.

"Indeed, the decision is so contradictory that either the case is fixed, which appears most likely, or the three-judge panel was so dumbfounded and confused by the lies and deception practiced by my adversary that it

handed down the most horrendous decision ever to be written in the history of the Second Circuit.

"In our notice of motion we stated that debtors/appellees' own family has just come forward with information showing that the petitions in bankruptcy are false and fraudulent documents, filed as a result of a conspiracy among the debtors and their attorneys, making this whole case a multi-million dollar swindle.

"It is inconceivable that the Court of Appeals for the Second Circuit would risk its character, reputation, and integrity to cover up for such low-life crumbs. This Court was obviously misled into an erroneous affirmance by the dishonesty and deception represented by the perjury and false documents in the courts below.

"Appellant requires additional time and an oversized petition to aid this Court in correcting its obvious errors."

If I may now read from the decision of the United States Court of Appeals, the third footnote to its decision, wherein that Court stated:

"Appellant's counsel has filed at least 25 motions in the course of these proceedings. Many were meritless and many repetitive. As a result, the costs of the proceedings have been increased so unreasonably and vexationally as to warrant consideration by this Court of an order requiring the attorney to satisfy personally the excess costs. See 28 USC Section 1927.

"We refrain from issuing such an order at this time only because counsel is a young man representing his widowed mother. In so doing, we in no way condone the course of conduct that counsel has pursued in this matter."

After the Court of Appeals threatened me with sanctions for filing 25 motions, for pursuing the truth, in attempting to seek justice done in this case, they then granted motion at least No. 26, in which I accuse my adversary and his client of conspiracy to defraud not only this court but the Court of Appeals and the United States Supreme Court.

We were before Bankruptcy Judge Roy Babbit on December 8, 1978 on a motion to have him impose sanctions on my adversary for the conspiracy to file false documents in that bankruptcy proceeding. After directing that the matter was very serious and that I refer to the United States Attorney and stating that he had no jurisdiction to impose sanctions upon my adversary, Bankruptcy Judge Roy Babbit then found the jurisdiction to impose sanctions upon me, claiming that my papers were vexations.

Your Honor, Bankruptcy Judge Roy Babbit has perpetrated a fraud on this Court, a fraud upon the United States Court of Appeals for the Second Circuit and upon the United States Supreme Court, very basically by entering an amended order, without conducting an evidentiary hearing, ordered the appellant paid for a period post-confirmation for the plan of arrangement.

This Court in its affirmance of the Bankruptcy Judge stated that it would

misrepresent and misread its affirmance of the Bankruptcy Judge's orders to state that it had taken any jurisdiction for the period post-confirmation.

The Court of Appeals likewise said that appellant has conceded payment for all deliveries made pre-petition, has conceded payment for all deliveries made during the period of arrangement and must seek her rights in a plenary action if any monies are due after the bankruptcies had terminated.

However, the order of the three-judge panel, or the affirmance of the three-judge panel held that we were to be paid $3,343.46.

Now, I ask, if we have been paid, if the appellant has been paid for all deliveries made pre-petition and during the arrangement and that court and this court refuses to take jurisdiction post-confirmation, where does the $3,343.46 come from?

Is it a bribe to my client to keep her mouth shut about the apparent fix in the bankruptcy court, about the corruption in this courthouse which threatens every judge.

My congressman has just sent me a letter, after reviewing the documentation submitted to the United States Court of Appeals for the Second Circuit, stating that he personally has reviewed this and believes that it should be referred to the most high members of the United States Department of Justice for an investigation. My office is starting to get deluged with calls from senators and congressman into the apparent corruption in this courthouse.

Your Honor has apparently unwittingly been a part of that corruption. We gave this court a number of cases citing the authority as to just what it should do when it determines to grant reargument after it acknowledges making a mistake in a performance.

This court has refused to do its duty.

We asked this court, on numerous occasions, based upon the fact that we were only going to get 20 minutes to argue in the Court of Appeals, to please take the case back from the Court of Appeals.

Once you send your order up on an appeal, let it be the best possible order that a United States District Court Judge can write.

Your Honor has refused repeatedly to do his duty. We ask once again now as a result of the erroneous affirmance, of this court's erroneous affirmance, that this court now vacate its order of February 22, 1978, affirming the orders of Bankruptcy Judge Babbit and --

THE COURT: That's what you are asking for today.

MR. SHUFFMAN: Vacate your order. Your Honor, we have authority. We have given you authority, under the Potash case and under a number of other cases, when an order is entered in violation of due process which as the amended order of Bankruptcy Judge Babbit was entered in violation of due process, without an evidentiary hearing, that order should have been vacated, it should have been vacated by Bankruptcy Judge Babbit.

This Court had no right to affirm an order entered in violation of due process.

THE COURT: You see that is your opinion, but the difficulty with your position is that the Court of Appeals has ruled otherwise, and the Court of Appeals has affirmed the order of this court which in turn affirmed the decision of Judge Babbit in his order, and that being so, it is law of the case, it is res judicata, and while you are perfectly free to pursue reargument in the Court of Appeals, which you say you will do, and you are perfectly free to petition the Supreme Court of the United States for certiorari on the case, but you do not belong here.

This case is a closed case in this court. The Court of Appeals has spoken. The fact that you disagree is beside the point. They have decided it and that's their function. They have to decide cases. And they hear cases and decide them, and that's what they have done, so that this litigation as between your client and the bankrupts is over and finished in the district court, and based on the December 6th decision of the Court of Appeals there is nothing to do here at all.

MR. SHUFFMAN: Your Honor, if I may state: After the argument in the United States Court of Appeals we went back to Bankruptcy Judge Roy Babbit. Based upon the same findings of fact which this court affirmed, the bankruptcy judge then changed his mind and directed that we refer the entire matter to the United States Attorney, because the file documents and the testimony given at the one hearing that we did have on

pre-petition debt conflicted with sworn statements interposed by my adversary and his client.

THE COURT: That is not before me. If the bankruptcy judge made that direction, anyone aggrieved with that can take the ordinary course of appeal through the Part I judge. That is not before me at all, anything like that.

MR SHUFFMAN: However, your Honor, I believe in a case where there has been a gross miscarriage of justice and a travesty of justice which this court has helped create that it is the duty of this court, under the United States Constitution, and under the laws of the United States, to do its duty and see that that gross miscarriage of justice does not stand.

I see no difference in this court's failure to do its duty than in a case where assuming a criminal defendant, the prosecution knows the witness lied, suborned perjury, a conviction was obtained, it was then upheld by the higher court, and then the trial court then finds out that in fact the witness lied, was sentenced to death and then went to his death, while the district court judge just sat there knowing that the witness is lying.

THE COURT: I really think that is a rather far-fetched analogy.

MR. SHUFFMAN: I don't see that, your Honor. You know that your decision was in error.

You state that you did not take jurisdiction for a period post-confirmation of the plan of arrangement. There is a question here whether you knew exactly what you were doing when you affirmed the orders of Judge Babbit in view of the fact that his amended orders specifically directed that we be paid only for the period post-confirmation, and you claim not to have taken any jurisdiction for that period.

We wonder just what went into the affirmance in this court.

THE COURT: Please bear in mind that the Court of Appeals has their function under the Consititution and statutes to either modify, reverse or affirm orders of the district court.

Now, human perfection doesn't exist in life, but the fact remains that I rendered a decision in this matter, my order of February 22, 1978 was reviewed by a panel of the Court of Appeals, and they rendered a decision which says that the order appealed from is affirmed.

That is about as clear English as can be granted, and that means to me that these issues comprised within that order or which could have been comprised within that order are now finally decided, res judicata applies here, and there is nothing that this court can do; even if convinced by your arguments, the Court has no power or jurisdiction to alter that final order.

That final order can only be dealt with by the Court of Appeals, by reargument or en banc hearing or by the Supreme Court of

the United States by writ of certiorari.

For you to be here is totally unproductive.

MR. SHUFFMAN: Your Honor, I believe as the cases outline, you can in fact enter an order stating that you were in error.

THE COURT: I believe you are wrong. I'm not here to enter orders stating I'm in error. I'm here to decide matters which are present before me in court, and I have no right to decide matters which have already been decided by a higher court.

MR. SHUFFMAN: Unless, of course, your Honor, you determine that your affirmance was an error.

The Court of Appeals relied on the affirmance of this court and was misled by the affirmance of this court.

THE COURT: They did not. They relied on their own judgment.

MR. SHUFFMAN: Your Honor, I believe they refer to this court's opinion, including the April 17, 1978 order, where this court vacated its determination to grant reargument.

THE COURT: Mr. Shuffman, I have to come to an end of this matter. Your case has been in the Court of Appeals. It's been decided there. The court lacks jurisdiction or power to grant any of the relief requested in these motions, and for that reason I'm denying each pending motion that you now have before me in this matter, and I'm going to

say to you, as plainly as I can, this decision of the Court of Appeals, decided December 6, 1978, is binding upon you, it's binding upon your client, it's binding on the bankrupts or Chapter XI debtors, whatever you want to call them, and unless and until they change it, that is the law of the case, that is res judicata, and there is no purpose to be served by you coming back here with any more motions, unless the picture changes in the Court of Appeals, or in the Supreme Court of the United States.

MR. SHUFFMAN: Your Honor, under Smith v. Pollen adopted in this circuit by Ryan v. United States Lines, this court does have the duty to move in the Court of Appeals for a remand now that it knows its own affirmance was in error.

THE COURT: I don't know that. They tell me that it's not in error. I don't know that there is any action by this court that is in error.

MR. SHUFFMAN: Your Honor stated that you did not take jurisdiction for a period of post-confirmation, yet you ordered the appellant paid monies post-confirmation.

THE COURT: That is what the bankruptcy judge ordered. The bankruptcy judge ordered the money paid to you and I remonstrated with Mr. -- with the gentleman who was here for the bankruptcy last time, Mr. Zirinsky, about why wasn't it paid when there was no stay, and I think he said he would pay it.

MR. SCHELER: Your Honor, he has directed the disbursing agent to do so.

THE COURT: He hasn't paid it yet?

MR. SCHELER: The disbursing agent has been told to do so. Mr. Shuffman wrote a letter to the disbursing agent requesting that he do not release those funds.

THE COURT: Did he not pay you?

MR. SHUFFMAN: No, we have not been paid, your Honor. We have asked him to withhold that payment until our petition for rehearing is filed in the Court of Appeals.

I might look to add for this record that we have been advised by clerks in the United States Court of Appeals for the Second Circuit that they have been threatened by judges' law secretaries and others if anyone were to dare talk to me about the errors in the Court of Appeals, and the mistakes which have been covered up, they'll immediately lose their job.

THE COURT: I think without names and dates, that type of a charge is out of line.

MR. SHUFFMAN: Your Honor, that type of information is being supplied directly to Mr. Neil Welsh, the head of the Federal Bureau of Investigation in New York, with whom I deal directly, based upon the fact that the United States House of Representatives and the United States Senate Committees on the Judiciary are conducting their own investigations into the conduct of this court and the Court of Appeals, based upon the fact that it has entered orders and has affirmed orders without conducting hearings, decisions rendered prior to scheduled hearings, which for want of a

better word, your Honor, spells fix.

THE COURT: Unless you have dates, times and places when such coercive statements were made, they are meaningless, so there is no use of you even telling me about them.

MR. SHUFFMAN: Fine, your Honor.

THE COURT: Some law clerks, there being 19 of them for active judges alone, and there are a few senior judges up there who have law clerks, some law clerks talked to some deputy clerk in the Court of Appeals and advised the deputy clerk not to get involved in a conversation with yourself?

MR. SHUFFMAN: Yes, sir.

There have been meetings --

THE COURT: Without a name it's meaningless.

MR. SHUFFMAN: There have been meetings called by Chief Clerk A. Daniel Fusaro, in which he has directed, and in my presence has directed members of his staff not to talk to me, under threats and because of the fact that we managed to obtain certified copies of decisions of the United States Court of Appeals for the Second Circuit rendered prior to hearings, those decisions, written by a different three-judge panel, that was then sent out and staged a charade hearing.

Your Honor, my client has been denied due process from the beginning. The bankruptcy judge has perpetrated a fraud on this

court. This court has extended that fraud into the United States Court of Appeals by its --

THE COURT: I don't agree with that. I think you are bound by the decision of the Court of Appeals unless and until it is either changed or reversed.

MR. SHUFFMAN: Your Honor, I think you can do a lot to change and reverse that order, knowing that it's in error.

THE COURT: All right, your motions are denied for want of jurisdiction and because the Court is bound by law of the case and res judicata, arising out of the decision of the Court of Appeals on December 6, 1978.

MR. SCHELER: Your Honor, one question for clarification.

Besides today's motion --

THE COURT: State your name for the record.

MR. SCHELER: Brad Scheler. In addition to today's motion, Mr. Shuffman had two outstanding motions before yourself.

THE COURT: When are they due?

MR. SCHELER: One you had adjourned to February 6, which was a motion for contempt against Bruce Zirinsky and two law firms.

I might point out that a similar motion had been made by Mr. Shuffman in the Court of Appeals and has been denied.

In addition, Mr. Shuffman had brought on a motion, fairly similar to the motion today, which was scheduled to be heard on December 8. That motion could not be heard at the time because you had a scheduling conflict. You adjourned it but we were never advised of a subsequent date.

It's the exact same motion as today, only today's motion reflects the Court of Appeals decision.

THE COURT: I think the Court of Appeals decision affects the motion which was on for December 8.

I don't know whether it affects the contempt motion or not because contempt is a collateral matter.

MR. SCHELER: Should we assume then that that matter --

THE COURT: I assume on the return date of that motion I will have to hear it, but as far as any substantive motions are concerned, this court is bound by law of the case, res judicata, estopped judgment, and there is no jurisdiction here and no power to grant substantive relief being requested.

MR. SHUFFMAN: Your Honor, may I ask --

THE COURT: And for those reasons the motion is denied, both motions.

MR. SHUFFMAN: Under Smith v. Pollen as adopted by Ryan v. United States Lines, if in fact this court had the jurisdiction, would it in fact amend, in which case I can

move for a remand in the Court of Appeals?

THE COURT: I don't consider it appropriate to answer academic questions.

MR. SHUFFMAN: Your Honor, according to Smith v. Pollen --

THE COURT: That is a speculative question.

MR. SHUFFMAN: -- it's your duty to render that academic decision.

THE COURT: I don't so regard it, and I decline to do so.

What is the February date, gentlemen?

MR. SHUFFMAN: I believe it's February 1, your Honor.

THE COURT: Well, that won't be an available date now so I will have to give you a date in the week of either the 6th or immediately thereafter of February.

What date do you want to come?

MR. SHUFFMAN: 6th is fine here, your Honor.

THE COURT: All right. February 6, 9:30.

MR. SCHELER: Thank you, your Honor.

* * * *